

**Statement of the  
Chemical Manufacturers Association/  
Society of the Plastics Industry, Inc.**

**Before the  
Committee on Commerce, Science  
and Transportation  
Subcommittee on Surface Transportation  
and Merchant Marine  
United States Senate**

**On  
Surface Transportation Board  
Reauthorization**

**March 31, 1998**

**BEFORE THE**  
**SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE**  
**SUBCOMMITTEE ON SURFACE TRANSPORTATION**  
**AND MERCHANT MARINE**

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**STATEMENT OF**  
**CHEMICAL MANUFACTURERS ASSOCIATION &**  
**SOCIETY OF THE PLASTICS INDUSTRY, INC.**

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**REAUTHORIZATION OF THE SURFACE TRANSPORTATION BOARD**  
**MARCH 31, 1998**

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Good morning madam chairman. I am Jon M. Huntsman, Jr., Vice Chairman of the Huntsman Corporation. Huntsman is the largest privately held chemical company in the United States. We have operations around the country and throughout the world. Our operating companies manufacture basic products for the chemical, plastics, detergent, and packaging industries. Huntsman-held companies have revenues of more than \$5 billion. Huntsman is a member of both the Chemical Manufacturers Association (CMA) and the Society of the Plastics Industry, Inc. (SPI).

Rail Transportation Is Critical to CMA and SPI Members

The chemical and plastics industries are both highly dependent on the rail industry for the safe and efficient transportation of our products. Without a reliable rail transportation system, many raw materials would not reach manufacturing plants – and many of our products would not be shipped to customers. SPI is a trade association of nearly 2,000 members representing all segments of the plastics industry in the United States. Its members consist of companies which supply raw materials, process or manufacture plastics and plastics products, and engage in the manufacture of machinery used to make plastics products or materials of all types. SPI's members are responsible for an estimated 75 percent of total sales of plastics materials and plastic products in this country. Plastics resins (Standard Transportation Commodity Code 28211), which is the primary material of interest to SPI in rail transportation, constitutes approximately 60 billion pounds of rail traffic, amounting to more than 347,000 carloads and \$1.1 billion in freight revenue.

CMA is a non-profit trade association whose member companies represent more than 90 percent of the productive capacity for basic industrial chemicals in the United States. In 1996, the chemical industry shipped 138.5 million tons of products by rail and paid over \$4.6 billion in rail freight charges. CMA's members depend heavily on rail transportation, particularly for the movement of bulk chemicals, which typically are carried in tank cars and covered hopper cars owned or leased by the

chemical companies.

CMA and SPI believe there must be more competition among railroads. While there is some competition in the rail industry, it does not universally exist. But where rail-to-rail competition does exist, rates are significantly lower and attention to service is better. There just is not enough competition in the rail industry to achieve its full potential to get U.S.-produced goods to market.

**We need Congress to seriously review and clarify the statutory authority of the Surface Transportation Board (STB) to expand and promote rail competition** (as discussed below). Ideally, we need to bring true market competition to the rail industry in order to improve the economic strength of the United States. The chemical and plastics industries must compete for sales on a global basis. Without the ability to have market competition for all transportation services, including rail, our international competitiveness suffers.

Reliable and cost-effective rail service is essential to the economic well-being of chemical and plastics manufacturers and their customers. But railroad mergers previously approved by the STB and its predecessor, the Interstate Commerce Commission, have left the nation with far too little rail-to-rail competition. Many facilities owned by SPI and CMA members are captive to a single railroad. Ironically, companies that tried to protect themselves by deliberately building facilities on competing rail systems have also become captive as previously competing carriers were allowed to merge.

#### SPI/CMA Principles for Competitive Rail Transportation

In light of these concerns, we jointly developed the SPI/CMA Principles for Competitive Rail Transportation (Principles). Those five Principles, which are attached to my testimony, are based on the following premise:

“Competitive rail transportation in the US is essential to providing efficient, low cost delivery of products to the consumer and for US companies to effectively compete in a global market.”

Let me emphasize that we are not seeking more government regulation of the railroad industry. To the contrary, we have learned since the Staggers Act was passed in 1980 that complex and costly regulatory proceedings are not the solution to the problems faced by captive rail shippers. Instead, we offer the Principles, which we believe provide a sound basis for promoting competition in the railroad industry. Each is summarized below:

- Principle #1 recognizes that, within the rail mode, shippers must be able to choose between completely independent competitive routes from origin to destination. The STB’s “Bottleneck” decisions show how a monopoly carrier can control the price of access to the national rail network, precluding a captive shipper from obtaining meaningful competitive rates and service. At the House Railroad Subcommittee’s March 12 hearing, Representative James Oberstar stated that the STB has the authority under existing law to promote and enhance rail competition. CMA and SPI agree that the STB can and should do so, but also share the frustration that led Senators Jay Rockefeller, Conrad Burns and Byron Dorgan to introduce S. 1429.

- Principle #2 declares that rail-to-rail competition must be preserved during mergers. For example, Congress needs to be aware that, after its recent merger with Southern Pacific, Union Pacific (UP) closed off Burlington Northern Santa Fe (BNSF) from access via reciprocal switching to traffic westbound from New Orleans. Similarly, CSX and Norfolk Southern have refused to affirm in STB proceedings that they will maintain the reciprocal switching that they have historically provided to customers on Conrail. **At a minimum, Congress must make it clear that the STB's role in merger proceedings specifically includes preserving the competition that currently exists.**
- Principle #3 favors line ownership by rail carriers. For example, Kansas City Southern (KCS) and the Texas Mexican Railroad (TexMex) seek a "clear path" through Houston that is not subject to UP's control. This illustrates the importance of a carrier having lines of its own, rather than trackage or haulage rights on the tracks of another railroad. **Congress should recognize this principle as a key part of its policy to promote market access.**
- Principle #4 requires that competing railroads have access to essential infrastructure. The severe difficulties currently being experienced by Gulf Coast shippers, as well as by BNSF, KCS and TexMex, illustrate the fundamental importance of terminal access and the unique role of storage-in-transit facilities, rail yards, and other related assets. **We strongly recommend that Congress clarify the STB's authority and responsibility to provide such access to essential rail infrastructure.**
- Principle #5 states that railroads should be subject to the same laws and regulations that apply to mergers and business practices in other industries. Competition has already enhanced service and reduced prices in the trucking, natural gas pipeline, securities exchange and long-distance telephone industries. In some states, customers are now beginning to choose their electricity suppliers. CMA and SPI believe that railroads as well as shippers will also benefit from competition. We therefore support beginning an orderly process to deregulate the rail industry and to make the rail industry subject to the same antitrust conditions as other industries.

These Principles guide our vision of competition in the rail industry. Each shipper should be able to pick up the phone and call competing rail carriers to obtain good service at reasonable rates. We envision a marketplace where railroads compete, innovate, and meet the needs of their customers. Such a marketplace would enhance fairness because all shippers would receive competitive service. Today, certain rail shippers benefit from competition when their facilities are served by more than one railroad or their traffic can be effectively moved by highway to reach competing rail carriers. Unfortunately, other shippers are captive to a single rail system for their service. Within their own sectors of the economy, those captive shippers must compete against non-captive firms that enjoy lower freight rates and better service. Rail-dependent exporting companies can be disadvantaged in world markets because they do not have competitive rail service at home.

#### Western Rail Service Problems

The lack of competition in the rail industry is underscored by the drastic rail service crisis that has plagued the UP system for the better part of a year. While

service has deteriorated in numerous locations throughout the West, things are worst in the Gulf Coast region, where Huntsman and many other chemical and plastics manufacturers have major facilities. UP has acknowledged that the problem is exacerbated in the Houston area by a lack of rail infrastructure. SPI and CMA believe that in a truly competitive rail industry, carriers would invest in track capacity and other infrastructure that is needed to meet shipper requirements.

Also attached to my testimony are two documents that describe the impact of the ongoing UP service disruption on our industries. One is a joint service level report that CMA, SPI and the National Industrial Transportation League filed with the STB on February 20, 1998. That report, which was requested by the STB, summarizes how member companies have been affected. Also attached for the Subcommittee's consideration is CMA's one-page summary of the economic impact of the crisis on the chemical industry.

#### Rail Traffic Embargo

Union Pacific has recently announced an embargo on traffic to Mexico via the rail crossing at Laredo, Texas. Even more disturbing is UP's suggestion earlier this month that it would consider a broad embargo on traffic to deal with congestion on its own system. **On behalf of SPI and CMA, I must express the strongest opposition to such embargoes.** Shippers, who have been suffering for months and have lost hundreds of millions of dollars, did not cause this crisis. America's chemical and plastics manufacturing industries, and their customers throughout the economy – indeed, throughout the world – should not be denied rail service.

#### Administration Proposal for STB User Fees

In considering reauthorization of the STB, Congress will address the Clinton Administration's proposal to fund all of the agency's operations through a user fee in Fiscal Year 1999. **We oppose requiring all parties who could potentially come before the STB to pay for its services, whether or not they actually make use of them.** The Administration's proposal is in fact a tax on the transportation community and not a user fee. CMA and SPI are concerned that such an approach could have a significant adverse impact on the transportation community in general and not just those who actually seek the STB's action on a particular matter. While it may be a small tax, the principle remains the same. We do not believe that a new tax on the transportation community is the appropriate way to go forward in funding the STB. This is even more true given the clear need to deregulate the rail industry and eventually eliminate the STB.

#### Support for S. 1429

**SPI and CMA support enactment of rail competition legislation that was introduced by three members of the Commerce Committee (Senators Rockefeller, Burns and Dorgan).** S. 1429 would clarify the national Rail Transportation Policy, overturn the STB's "Bottleneck" decisions, simplify the market dominance standard, and eliminate the revenue adequacy test. Enactment of this legislation would help to move the country toward our ultimate vision of a competitive and deregulated rail industry.

#### Improving the Public Interest Standard

**Another immediate remedy would be for Congress to revise the public interest standard under which the STB reviews railroad mergers and**

**acquisitions.** Not only must rail-to-rail competition be preserved where it exists, but the STB must also be positively charged with enhancing and promoting such competition. We urge Congress to make this legislative change quickly.

Conclusion

**We strongly urge Congress to adopt and apply the SPI/CMA Principles for Competitive Rail Transportation.** Where statutory change is needed, those Principles provide sound guidance toward a more competitive and less regulated marketplace. Thank you for inviting me to appear before this Subcommittee.

# **SPI/CMA**

## **Principles for Competitive Rail Transportation**

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**Competitive rail transportation in the US is essential to providing efficient, low cost delivery of products to the consumer and for US companies to effectively compete in a global market.**

The following five principles are fundamental to a competitive environment.

**1. Competition, by definition, means having more than one railroad competing for the same business.**

◆ Head to head rail competition is the key driver for innovation, service level improvements and pricing. Without it, there remains little incentive to improve, and no marketplace constraints to control pricing, and service levels.

Because rail to rail competition is fundamental and essential, shippers must have choices among competing rail carriers (origin through destination).

Other transportation modes (truck, marine, intermodal, etc.) may not provide effective cost or service alternatives to rail due to distance, commodity, volume and infrastructure required.

**2. In any further consolidation within the rail industry, rail to rail competition which exists must be preserved consistent with principles applied to industries generally.**

◆ Mergers should not create or enhance monopoly power for any railroad in any market.

Railroads must maintain joint line routing that currently exists; and industries currently open to reciprocal switching must continue to remain open.

**3. Railroad owned routes is the strongly preferred method to provide effective competition.**

◆ Railroads must have effective market access in order to compete.

Line ownership determines control over the investment, safety, service and operating efficiencies.

Trackage rights, or haulage rights, when used as a means of providing competition, have not proven to be as effective on cost or service basis.

**4. Railroads must have access to the available rail infrastructure (origin, destination, storage and bulk transfer facilities).**

◆ Terminal access is essential if a railroad is to effectively compete for haulage.

Competitive rail access is essential to shippers and consumers for new and existing facilities.

**5. Railroads should not be exempted from anti-trust laws, and future rail mergers should be subject to the same regulatory principles and processes as mergers in other industries.**

## Chemical Manufacturers Association UPSP Service Deterioration Survey

Beginning in the Spring of 1997, a number of chemical companies have been experiencing service difficulties in receiving raw materials and in shipping final product nationwide, but the problem appears to be most severe in the Union Pacific/Southern Pacific (UPSP) service area along the Gulf Coast. Since mid-September, the Chemical Manufacturers Association (CMA) has been conducting a survey of member companies to quantify some of the cost effects to the chemical industry from service deterioration or disruption.

CMA is a non-profit trade association whose member companies represent more than 90 percent of America's productive capacity for basic industrial chemicals.

A survey of CMA member companies with plant locations in the UPSP service area indicate that during the Summer, average monthly costs of service disruption totaled \$34.9 million per month for the 33 companies responding. A number of companies also indicated that the problem has been exacerbated with time, and these companies indicated that costs could rise over the average levels of the Summer months to as much as \$52.6 million per month in September. In October the figure was \$36.2 million and for November the number was \$31.9 million, in December it was \$19.8 million, and \$25.0 million in January.

Nearly 59% of the total costs arises from lost sales (or production) resulting from the deterioration of service during the last four months. Losses arising from other commercial factors or lost production that was met by production from other plant locations were not included in the survey. Over 30% of the additional monthly cost arises from higher freight and shipping costs. These are figured on a net basis, or what freight costs are above what they would be had this service problem not occurred. For example, if the cost to ship a product via UPSP was \$1000, but because of service disruption more expensive truck transportation costing \$1250 is now used, then the additional cost is \$250, not \$1250. The remaining 11% is from lost rail car utilization, additional inventory carrying costs, the higher cost of raw materials purchased from other producers, the cost of tracing cars, and other administrative expenses. During the Summer, the comparable figures were 67% from lost sales, 23% from higher freight costs, and the remaining 10% were other costs.

These 33 chemical companies have a combined rail fleet of 107,765 cars and a rail volume of more than 46.4 million tons per year. The survey indicated that 209 major production facilities were affected by disruption in service, placing a large number of jobs at risk. Employment at these facilities exceeds 120,500 people.

An additional group of 22 companies reported costs for the October through January period. The costs of lost sales, higher freight charges and other expenses for these companies totaled \$7.5 million in October, \$7.4 million in November, \$7.5 million in December, and \$6.6 million in January. These chemical companies have a combined rail fleet of over 22,710 cars and a rail volume of more than 15.1 million tons per year. The companies indicated that 121 major production facilities were affected by disruption in service. Employment at these facilities exceeds 32,300 people.

For additional information please contact Gary W. Griffith, Legislative Representative, Transportation, at (703) 741-5914.